

FEDERAL AGENCY CONSISTENCY DETERMINATION OUTLINE

This document is an outline for Federal agencies to use when making a Consistency Determination under the Coastal Zone Management Act, Section 307. Although not required for the purpose of Federal consistency, in accordance with 15 C.F.R. § 930.39(c), the Federal agency should consider the advisory policies (recommendations) of the VCP as well.

Coastal Zone Management Act (CZMA) Consistency Determination

This document provides the Commonwealth of Virginia with the **[Federal Agency]**'s Consistency determination under CZMA section 307 and 15 C.F.R. Part 930 sub-part C. The information in this Consistency Determination is provided pursuant to 15 C.F.R. section 930.39.

Ms. Ellie Irons
Department of Environmental Quality
Virginia Coastal Program, Room 631
629 East Main Street
Richmond, Virginia 23219

SUBJECT: FEDERAL COASTAL CONSISTENCY DETERMINATION FOR **[SPECIFY]**

Dear Ms. Irons:

Pursuant to Section 307 of the Coastal Zone Management Act, 16 U.S.C. § 1456, as amended, its implementing regulations at 15 C.F.R. Part 930, this is a Federal Consistency Determination for subject [activity][development project].

Proposed Federal agency action:

[Describe the Federal agency activity or reference relevant pages of enclosed NEPA document].

The **[Federal agency name]** has determined that the **[proposed activity]** may reasonably affect the land or water uses or natural resources of the Commonwealth of Virginia's coastal zone in the following manner:

[List and/or briefly describe the State's applicable enforceable policies and describe any reasonably foreseeable effect on each enforceable policy. Provide information, comprehensive data and

analysis supporting the determination of consistency with the applicable policies. Sample responses are provided.]

ENFORCEABLE POLICIES OF THE VIRGINIA COASTAL RESOURCES MANAGEMENT PROGRAM

1. Fisheries Management.

[As indicated in the Draft EA/EIS (page , section),]

[The proposed project will not likely adversely impact finfish and shellfish resources or commercial or recreational fisheries in state waters.]

[The proposed project may likely adversely impact [finfish resources][shellfish resources] [commercial fisheries] [recreational fisheries] in state waters. [Specify impact(s), describe Federal agency consistency plan, and provide Federal/state coordination and/or state concurrence.]

[The [Federal agency] is coordinating with the Virginia [Marine Resources Commission] and/or [Department of Game and Inland Fisheries.]

2. Subaqueous Lands Management.

[As indicated in the Draft EA/EIS (page , section),]

[The proposed project does not involve any encroachments in, on or over state-owned submerged lands.]

[The proposed project will likely encroach in, on or over state-owned submerged lands. [Specify impact(s)/encroachment(s), describe Federal agency consistency plan, and provide Federal/state coordination and/or state concurrence.]

[The [Federal agency] [has obtained][will obtain] a subaqueous bed encroachment permit from the Virginia Marine Resources Commission.]

[The proposed project will likely encroach in, on or over state-owned submerged lands. Pursuant to the [the Federal Navigational Servitude Doctrine] [statutory exemption (cite)] [regulatory exemption (cite)] [Federal/state Agreement (cite)], the [Federal agency] is exempt from Virginia Marine Resources Commission subaqueous bed permitting requirements.]

3. Wetlands and Water Quality.

[As indicated in the Draft EA/EIS (page , section),]

[The proposed project will likely not adversely impact regulated wetlands, as delineated by the Army Corps of Engineers' 1987 Wetlands Delineation Manual.]

[The proposed project will likely adversely impact regulated wetlands, as delineated by the Army Corps of Engineers' 1987 Wetlands Delineation Manual. [Specify impact(s), describe Federal agency consistency plan, and provide Federal/state coordination and/or state concurrence.]]

[The proposed project will require a Virginia Pollutant Discharge Elimination System (VPDES) Stormwater General Permit for related construction activities.]

[The proposed project will include the dredging of [dredge site]. The [Federal agency] has obtained the following applicable permit(s): [provide specifics and copy]. Dredging and associate disposal operations will be in accordance with all applicable federal, state and local laws and regulations. The [Federal agency] will use Best Management Practices (BMPs) and other measures to preclude the resuspension of contaminated sediments in the water column and the entry of waste materials and other debris or contaminants into state waters.]

[The [Federal agency] will employ sediment traps on drainage structures, the use of pervious materials for parking lots and runways, and the use of infiltration galleries to reduce and improve the quality of stormwater runoff into state waters.]

[The [Federal agency] will implement and maintain proper erosion and sediment control measures, including Best Management Practices (BMPs), to minimize potential adverse impacts to water quality resulting from surface runoff, especially the entry of contaminants or sediment into nearby wetlands and waters of the state.]

4. Dunes Management.

[As indicated in the Draft EA/EIS (page , section),]

[The proposed project does not involve an encroachment upon or the destruction or alteration of coastal primary sand dunes as defined by the Coastal Primary Sand Dune Protection Act, Virginia Code §28.2-1400 to §28.2-1420.]

[The proposed project involves an [encroachment upon] [destruction of] [alteration of] coastal primary sand dunes as defined by the Coastal Primary Sand Dune Protection Act, Virginia Code §28.2-1400 to §28.2-1420. [The proposed project will likely not adversely impact regulated wetlands, as delineated by the Army Corps of Engineers' 1987 Wetlands Delineation Manual.]]

[The [Federal agency] is coordinating with the Virginia Marine Resources Commission. [Provide specifics].]

5. Erosion and Sediment Control and Stormwater Management.

[As indicated in the Draft EA/EIS (page , section),]

[The proposed project does not involve regulated land-disturbing activities.]

[The proposed project is likely to result a land disturbance of 2,500 feet or more requiring compliance with the Virginia Erosion and Sediment Control Law and its implementing regulations. The [Federal agency] will develop and implement an Erosion and Sediment Control Plan to minimize nonpoint sources pollution by employing effective erosion and sediment control practices and structures.]

[The proposed project is likely to result a land disturbance of greater than or equal to one acre requiring compliance with the Virginia Stormwater Management Law and its implementing regulations. The [Federal agency] will develop and implement a Stormwater Management Plan to minimize nonpoint sources pollution by employing effective stormwater control practices and structures.]

6. Point Source Pollution.

[As indicated in the Draft EA/EIS (page , section),]

[The proposed project will not result in any point-source water pollution.]

[The proposed project will likely result in point-source discharge of water pollution and require a Virginia Pollutant Discharge Elimination System (VPDES) Permit. [Specify].]

[The proposed project will not generate any new discharge and will comply with the Virginia Pollutant Discharge Elimination System (VPDES) Stormwater General Permit for associated construction activities.]

7. Shoreline Sanitation.

[As indicated in the Draft EA/EIS (page , section),]

[The proposed project does not involve the installation of septic tanks.]

[The proposed project involves the installation of septic tanks. The [Federal agency] will ensure that the proposed project follows all applicable Virginia Department of Health standards governing the installation of septic tanks, soil types suitable for septic tanks, and minimum distances that tanks must be placed away from streams, rivers, and other waters of the Commonwealth.]

8. Air Quality.

[As indicated in the Draft EA/EIS (page , section),]

[The proposed project may require an air permit for [provide emission source (e.g., heating facilities, emergency generator)] that is described [implied from the project description]. [Specify emissions and requirements].

[The [Federal agency] will obtain the required permit(s) in accordance with all applicable federal, state and local laws and regulations.]

[The proposed project site is located within an ozone maintenance area, as well as within a State designated Volatile Organic Compound and Nitrogen Oxides Emission Control (VOC/NOx) area. The [Federal agency] will employ precautionary measures to reduce ground-level ozone concentrations (especially during ozone alert days) by minimizing the generation of ozone precursors such as volatile organic compounds and nitrogen oxides principally by controlling or limiting the burning of fossil fuels during the operation of construction equipment and vehicles. All access roads, parking areas/lots/garages and

ingress/egress will be designed and constructed so as to avoid or minimize traffic congestions and/or unnecessary localized vehicular idling.]

[Construction activity related to the proposed action is likely to give rise to fugitive dust emissions. During construction, fugitive dust will be kept to a minimum by employing measures that include, but are not limited to the following: [cite applicable measures]. Examples include:

1. The installation and use of hoods, fans and fabric filter to enclose and vent the handling of dusty materials;
2. Covering of open equipment for conveying materials;
3. Washing down construction vehicles;
4. Providing construction entrances;
5. Applying water to suppress dust; and
6. Washing down paved roadways immediately adjacent to the construction site.]

[Construction and operation of the proposed project will be subject to regulation by the Department of Environmental Quality. The following sections of Virginia Administrative Code are applicable:

[cite applicable provisions. Examples include:

- 9 VAC 5-50-80 and -90 governing the abatement of visible emissions and fugitive dust emissions;
- 9 VAC 5-40-5620 and -5630 addressing open burning; and
- 9 VAC 5-40-55120 restricting the usage and application of cut-back asphalt (liquefied asphalt cement, blended with petroleum solvents) for paving during the months of April through Octobers for localities designated as VOC/NOx emission control areas.]

9. Coastal Lands Management.

[As indicated in the Draft EA/EIS (page , section),]

[The proposed activities will not involve either development or redevelopment activities upon any properly designated Chesapeake Bay Preservation Area as defined by the Chesapeake Bay Preservation Act, Virginia Code 10.1-2100 *et seq.* and its implementing Chesapeake Bay Preservation Area Designation and Management Regulations, 9 VAC 10-20-10 *et seq.*]

[The proposed project is reasonably likely to encroach upon a properly designated Chesapeake Bay Preservation Area. [Specify activities and impacts]. The proposed new development or redevelopment activities are subject to the Chesapeake Bay Preservation Act's and implementing regulations' performance criteria and local ordinance requirements. Specifically, the proposed project is subject to the following: [cite applicable development and performance criteria and local ordinance, etc. requirements].]

Based upon the following information, data, analysis, the [Federal agency name] finds that the **[proposed activity]** is either fully consistent or consistent to the maximum extent practicable with the federally approved enforceable policies of the Virginia Coastal Resource Management Program.

In accordance with 15 C.F.R. § 930.30(c), we considered the applicable advisory policies of Virginia's Coastal Resources Management Program.

[If the determination is that the proposed action is consistent to the maximum extent practicable with the enforceable policies of the VCP, provide a description and/or analysis of the legal authority that prohibits full consistency. See 15 C.F.R. §§ 930.32(a); 930.39(a)].

Pursuant to 15 C.F.R. § 930.41, the Virginia Coastal Resources Management Program has 60 days from receipt of this letter in which to concur with or object to this Consistency Determination, or to request an extension, in writing, under 15 C.F.R. § 930.41(b). Virginia's concurrence will be presumed if its response is not received by **[Federal agency]** on the 60th day from receipt of this determination. The state's response should be sent to:

[Provide Federal agency contact information].

Signature
Title
Authority

Encl:
[DRAFT EA/EIS]
[Other Supporting Data/Information]

Copy to:

